



UNIVERSITY OF MISSOURI-KANSAS CITY

# Implementation Considerations for Universal Coverage: ERISA

Informational Hearing: California Assembly Select  
Committee on Health Care Delivery Systems and  
Universal Coverage

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# What is ERISA?

- The Employee Retirement Income Security Act of 1974 (**ERISA**) is a federal law that regulates private-sector pensions and other employee benefit programs, including job-based **health** coverage.
- **ERISA** is relevant to **health** policy because it preempts state laws that relate to employee plans.
- Federal **preemption** is a doctrine that asserts that when state law and federal law conflict, federal law displaces, or preempts, state law, due to the **Supremacy Clause** of the

# Private Sector: Difference Between a Fully Insured and Self-Insured Plan

- Self-funded ERISA plans are exempt entirely from state regulation and state law claims under ERISA's deemer clause (section 514(b)(2)(B)).
  - This creates an incentive for employers to become self-insured: exempt from state regulation and benefit mandates.

# What is Left to the States by ERISA?

- Tax and regulate traditional insurers performing traditional insurance functions.
- Regulate multiple employer welfare arrangements.
- Regulate hospital rates charged to insurers and others who pay health care bills, tax health care providers.
- Provide remedies for injuries when a health plan controls medical care delivery/traditional medical cases.

# What Can't the States Do Under ERISA?

- Directly regulate private employer-sponsored health plans.
- Mandate that private employers offer or pay for insurance.
- Tax private employer-sponsored health plans themselves.
- Regulate self-insured private employee plan benefits or financial solvency.
- Traditionally: States could not mandate external review, except ACA (Section 2719) requires that binding, de novo, external review be available.

# Ambiguous State Authority to Regulate Health Insurance Under ERISA

- Regulation of stop-loss insurance.
- Independent external review/appeals programs.
- Employer pay-or-play health care programs.
- Regulation of third party administrators (TPAs) that administer self-insured plans.

# What About State Specific Health Care Reform?

- ERISA may prohibit an employer mandate (because it “relates to” employer sponsored plans)
- An individual mandate is most likely to avoid challenge if it makes no reference to employer-sponsored health plans.
- Even taxes can raise ERISA preemption problems if state law conditions tax advantages or disadvantages on plan design features.

# Golden Gate Restaurant Assoc. (9<sup>th</sup> Cir. 2008)

- SF's "pay or play" ordinance was upheld because it was not itself an ERISA plan.
- Because the City and County of SF had offered an alternative that was not available in *Fiedler*.
- No cert., ACA passed
  - Might be where the story continues.





# Gobeille v. Liberty Mutual (U.S. 2016)

- The Secretary of Labor has preempted state mandated reporting requirements of claims data from plans governed by ERISA.